

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BRIAN WHITAKER,
Plaintiff,

v.

SEQUOIA MAIN STREET, LLC,
Defendant.

Case No. 21-cv-03793-JD

ORDER RE MOTION TO DISMISS

Re: Dkt. No. 9

Plaintiff Brian Whitaker has sued defendant Sequoia Main Street, LLC (“Sequoia”), for disability discrimination under the Americans with Disabilities Act, 42 U.S.C. § 12182(a), and the Unruh Civil Rights Act, Cal. Civ. Code §§ 51-53. Whitaker is a quadriplegic who uses a wheelchair for mobility. He alleges that he visited “Happy Nails,” a business located on Sequoia’s property, but could not patronize the business because “there was an unramped step at the entrance.” Dkt. No. 1 ¶¶ 8, 12. Whitaker says that Sequoia’s failure to provide “wheelchair accessible paths of travel” denies him full and equal access in violation of the ADA. *Id.* ¶¶ 10, 16.

Sequoia’s request to dismiss the complaint for failure to state a claim under *Whitaker v. Tesla Motors, Inc.*, 985 F.3d 1173 (9th Cir. 2021) -- a case brought by the same plaintiff here -- is denied. As this Court recently explained, *Tesla* “affirmed a dismissal of Whitaker’s claims because the complaint alleged only that Tesla ‘failed to provide accessible service counters,’ without stating whether the counters were too low, too high, or inaccessible for a different reason. The panel concluded that, ‘[w]ithout this sort of factual detail,’ Tesla ‘was left in the dark about how the service counters denied Whitaker from full and equal enjoyment of the premises.’” *Whitaker v. AMT Tech, Inc.*, No. 21-cv-03045-JD, Dkt. No. 18 (N.D. Cal. Aug. 16, 2021) (quoting *Tesla*, 985 F.3d at 1177).

1 Here, Whitaker, a quadriplegic, has specifically alleged the existence of an unramped step
2 at the entrance to Happy Nails, which is enough to give Sequoia fair notice of the claim that he
3 was denied full and equal access under the ADA. Sequoia suggests that Whitaker needed to allege
4 that the “unramped step actually blocked his travel” or that it was “too high to get over or
5 presented too far a drop to go down,” Dkt. No. 9 at 8, but pleading an ADA claim does not require
6 such additional details.

7 For the same reasons, Sequoia’s request to dismiss the complaint for lack of standing is
8 denied. In addition, Whitaker has alleged an intention of returning to Happy Nails once it
9 complies with the ADA, Dkt. No. 1 ¶ 20, which also establishes standing. *See Strojnik v. 574*
10 *Escuela, LLC*, No. 3:18-CV-06777-JD, 2020 WL 1557434, at *4 (N.D. Cal. Mar. 31, 2020) (citing
11 *Civil Rights Educ. & Enf’t Ctr. v. Hosp. Props. Tr.*, 867 F.3d 1093 (9th Cir. 2017)).

12 Sequoia’s request to “declare Whitaker a vexatious litigant, which would require him to
13 obtain leave of court before filing future claims under the Americans with Disabilities Act in any
14 California Court,” Dkt. No. 9 at 13, is denied. Whitaker’s complaint states a perfectly plausible
15 claim for relief, and so it is neither frivolous nor harassing. The sanctions of a pre-filing order and
16 vexatiousness declaration are not warranted in these circumstances. *See De Long v. Hennessey*,
17 912 F.2d 1144, 1147-49 (9th Cir. 1990).

18 **IT IS SO ORDERED.**

19 Dated: October 26, 2021

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24 JAMES DONATO
25 United States District Judge
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